Calobrisi v. Booz Allen Hamilton Inc., Case No. 1:13-cv-00952-ABJ
Plaintiff's Motion for Surreply

Attachment A

Surreply

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CARLA CALOBRISI **Plaintiff,** v. **BOOZ ALLEN HAMILTON INC.** **Defendant.**	)	**Case No. 1:13-cv-00952-ABJ**

PLAINTIFF CALOBRISI'S SURREPLY IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

Plaintiff respectfully submits this surreply to address new issues raised by Defendant in its Reply Memorandum in Response to Plaintiff's Opposition to Defendant's Motion to Dismiss Counts I, II, III, V and VI and its Motion to Transfer All Remaining Counts [Docket Entry ("DE") # 16] ("Def. Reply"). In a reply with new arguments and repeated misrepresentations, such as that Ms. Calobrisi filed her Opposition on July 19 (when she actually filed on July 18) or that she concedes that she was "wrong" (when she actually disputes Defendant's claims), Defendant overreaches and exaggerates in its favor in an effort to obtain the drastic remedy of dismissal before discovery. As shown in her Corrected Memorandum of Points and Authorities in Opposition to Motion to Dismiss ("Opposition") [DE # 14], her Motion for Discovery on Venue and Jurisdiction ("Motion for Discovery") [DE # 15], and in the points below, the Court should deny Defendant's requests entirely.

1) Plaintiff's Opposition is Timely.

Plaintiff met her deadline to file her Opposition by July 18, 2013. Defendant states that "Plaintiff did not file her Opposition until Friday, July 19, 2013." (Def. Reply at 4.) This plainly misrepresents the Court's Docket Entry # 12, which states that Plaintiff filed her Memorandum of Points and Authorities in Opposition to Motion to Dismiss on Thursday, "7/18/2013."

Defendant further claims that Ms. Calobrisi's deadline was July 16, 2013 (Def. Reply at 4), but Defendant is wrong. Defendant filed and served its Motion to Dismiss on July 1, 2013 by electronic service. (*See* DE #6 (Defendant's Amended Certificate of Service).) Because Defendant served the Motion electronically, Plaintiff had 17 days to file her memorandum, making her Opposition due on July 18, 2013. *See* LCvR 7 (b) (14 days to file a memorandum of opposing points and authorities); Fed. R. Civ. P. 6(d) (3 more days for electronic service pursuant to Rule 5(b)(2)(E)).

Defendant calculates Plaintiff's deadline based on its July 2, 2013 hand delivery of copies to Plaintiff's Counsel. (*See* DE #6.) Because Defendant served these copies the day after service had already been effected, however, they amounted to mere courtesy copies. Defendant cannot convert electronic service into hand delivery by providing a courtesy copy on a day *after service has been completed*.[1] Therefore, Plaintiff timely filed on July 18, 2013.

2) Hearsay Evidence May Support a Factual Basis for Allegations in the Complaint.

Defendant raises new issues related to the correspondence of counsel from June 2013 and criticizes Plaintiff for basing her conclusions about an alleged January 2011 Cosmos Club meeting on "hearsay" statements of Mr. Osborne's secretary, Elizabeth Nett. (Def. Reply at 4-5, 7). Yet, Defendant misconstrues the standard on a motion to dismiss. In *King v. Holder*, No. 12-319, 2013 U.S. Dist. LEXIS 86690 *13 (D.D.C. June 20, 2013), the Defendant employer, like Booz Allen here,

[1] For instance, had Defendant decided to hand deliver a courtesy copy two days after service had already been effected, would then Defendant argue that the brief was due on yet a different day? Contrary to Defendant's unpredictable approach, the deadline is clearly dictated by the type of service on the date that service was effected.

argued that hearsay could not suffice to create a factual basis for an allegation in the complaint. This Court rejected that argument, however, and found instead that plaintiffs do not have the "obligation at this stage in the proceedings" to support every factual claim with nonhearsay. *See King* at *13-14. Rather Plaintiff need only provide sufficient factual allegations from which the plaintiff could make a claim, "*on the assumption that all the allegations in the complaint are true*." *Id.* at *14. Here, Plaintiff has provided her Declaration with the facts from which she concluded that the decision to demote her was made at a meeting at the Cosmos Club in January 2011. Her factual basis is sufficient at "this stage in the proceedings." *Id.* at *13-14.

Moreover, Plaintiff seeks to depose Ms. Nett for the very purpose of probing Ms. Nett's statement and knowledge of any Cosmos Club meetings. (*See* Pl. Mem. Mot. Discovery [DE # 15-1] at 3.) Defendant puts the cart before the horse when it claims that Ms. Calobrisi should not have any opportunity for venue discovery (to obtain nonhearsay evidence) because at this stage some of the facts might be construed as hearsay.

Notably, what is missing from the June 2013 correspondence is any mention by *Defendant's* Counsel of a Cosmos Club meeting on February 15, 2011 regarding Bob Osborne's vision for the Law Department. Because numerous discriminatory and retaliatory acts occurred *after* the February Cosmos Club meeting and Mr. Osborne himself shared with Plaintiff his discriminatory vision for the Law Department, Defendant's admission either establishes that venue lies in the District of Columbia or that further discovery is warranted. (*See* Pl. Opp. [DE #14] at 7, 11-13). Had Defendant provided these facts to Ms. Calobrisi in the June 2013 exchange, Plaintiff could have further disabused Defendant of any notion that it could dismiss any claims or transfer venue without discovery.

3) Defendant now infers that there was only one Cosmos Club event.

Defendant now makes the new claim that its alleged February 15, 2011 Cosmos Club meeting was the "one and only Cosmos Club event" (Def. Reply at 7.) Yet, the sworn declarations of Defendant's witnesses do not say as much. The Declarants refer to "the meeting at the Cosmos Club," but nowhere do they say that this was the "one and only Cosmos Club event." (*See* Meyers Decl. ¶12; Appleby Decl. ¶ 14; Manya Decl. ¶8; Osborne Decl. ¶ 8.) Defendant asks the Court to adopt its interpretation, however as the moving party on a motion to dismiss, Defendant is not entitled to any inferences. *See, e.g., McQueen v. Harvey*, 567 F. Supp.2d 184, 186-87 (D.D.C. 2008) (Defendant must present "specific facts" establishing its position). Where the facts are disputed by Plaintiff Calobrisi (*see* Pl. Mem. Mot. Discovery [DE # 15-1] at 3-4; Calobrisi Decl. ¶ 5), as the non-moving party, Plaintiff–not Defendant–is entitled to "all reasonable inferences." *McQueen*, 567 F.2d at 186. Because Plaintiff reasonably inferred from the facts that a Cosmos Club meeting took place in January 2011 and Defendant's facts do not specifically rule out that meeting, the Court must accept Plaintiff's position as true or should allow for discovery.

4) Plaintiff's facts showing systematic discrimination are relevant to disparate treatment.

On reply Defendant challenges for the first time Plaintiff's use of facts asserted in her Complaint that show systematic discrimination emanating from the firm's Washington, DC leadership. (Def. Reply at 9-10.) Yet, Defendant erroneously argues that "pattern or practice" evidence is irrelevant to an individual case. Critically, Defendant provides an incomplete cite to *Marcus v. Geithner*, 813 F. Supp.2d 11, 20 (D.D.C. 2011) and omits the following passage from *Marcus* which supports Plaintiff's position:

> Although an individual plaintiff may not rest solely on the "pattern or

> practice" approach when proving liability, an individual plaintiff may introduce evidence of **systematic or general discrimination when developing her individual discrimination claims within the *McDonnell Douglas* framework. . . . Accordingly, the plaintiff may still bring proof of a pattern or practice of discrimination**, but she must operate within the context of the *McDonnell Douglas* framework.

Marcus, 813 F. Supp.2d at 22 (citations omitted) (emphasis added). Further in *Marcus,* this Court specifically cites to *Davis v. Califano,* 613 F.2d 957, 962 (D.C. Cir. 1979) for the proposition that evidence of a pattern, practice, or standard operating procedure can support an individual case of discrimination. *Id.*[2]

As shown in Plaintiff's Opposition and Motion for Discovery, Appleby (who Defendant says decided to demote Ms. Calobrisi) met with President Shrader and the Leadership Team in the District of Columbia and made decisions that maintained the firm's glass ceiling. (*See* Pl. Opp. [DE # 14] at 2-3, 7-11; Pl. Mot. Mem. Discovery [DE # 15-1] at 5-6.) Where facts suggest that Shrader sent a message to Appleby to follow his example and Appleby then applied Shrader's practice to demote and constructively discharge Ms. Calobrisi (*see id.*), facts showing discriminatory and retaliatory practices or policies dictated by the firm's highest level Washington, DC leadership are directly relevant to Ms. Calobrisi's *individual* claims and support venue in the District of Columbia and Plaintiff's Motion for Discovery. *See Marcus*, 813 F. Supp.2d at 22 (facts showing systematic, general, or "pattern or practice" discrimination may support individual claim); *Davis,* 613 F.2d at 963 (pattern or practice may show a "'greater likelihood that any single decision was a component of the overall pattern'") (citation omitted).

[2] Defendant also cites to *Schuler v. Pricewaterhousecoopers, LLP*, 739 F.Supp.2d 1, 7 (D.D.C. 2010), but that case is off point because the plaintiff attempted to bring a class action.

5) In Reply, Defendant's requests for a series of inferences in its favor are improper.

- Defendant infers that Plaintiff "implicitly" concedes that the facts surrounding her own employment have no connection to the District of Columbia." (Def. Reply at 3, 9.) To the contrary, Plaintiff claims that decisions were made in the District of Columbia that were discriminatory and retaliatory and surrounded her own employment. (*See* DE # 14; DE #15.)

- Defendant infers that Plaintiff "concedes that if the Court finds that the decision to move Plaintiff into a Senior Associate position was not made at the Cosmos Club in February 2011, then venue is improper." (Def. Reply at 5.) To the contrary, Plaintiff claims that the demotion decision was one of *many* decisions made by Defendant that render venue proper in the District of Columbia. (*See* DE # 14; DE #15.)

- Defendant infers that Plaintiff concedes that she was wrong about "both the date and purpose of the Cosmos Club meeting and has no facts to support her position." (Def. Reply at 8.) Plaintiff does not make this concession. Plaintiff provides her factual basis for her belief in a January Cosmos Club meeting, establishing that there is a disputed fact. She seeks discovery on those subjects because Defendant has challenged those facts in its Motion to Dismiss. Additionally, Plaintiff shows that the purpose of the February 2011 meeting also has a nexus with her claims of discrimination and retaliation. (*See* DE # 14; DE #15.)

CONCLUSION

This surreply is limited to new issues raised by Defendant on reply. With respect to the rest of Defendant's points, Plaintiff respectfully refers the Court to Plaintiff's Opposition [DE #14] and Plaintiff's Motion for Discovery [DE #15]. For the reasons stated therein, the reasons set forth above, and any others the Court may so find, Plaintiff respectfully requests that the Court deny

Defendant's Motion to Dismiss or, in the alternative, grant her pending Motion for Discovery.

Respectfully submitted,

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